IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9371 OF 2004

Union of India .. Petitioner
Versus
B.B.Karhade .. Respondent

Mr.Suresh Kumar for petitioner
Mr.Rahul Walia for respondent.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.
DATE : 9TH DECEMBER 2004.

P.C.

. Union of India through General Manager, Western Railway impugns the judgement and order dated 10th Sepetember 2004 passed by Central Administrative Tribunal, Mumbai in O.A. No.488 of 2004.

2. It is not disputed that respondent is an employee of railways. Some time in 1981 he was promoted as Assistant Electrical Engineer and was posted at Kota. On 12th November 2003 he joined his present posting i.e. Deputy CEE (C),

Churchgate, Group "A". He is due to retire on attaining age of superannuation on 31st December 2005. By an order passed on 16th July 2004, petitioner transferred respondent to Ratlam as Senior Divisional Electrical Engineer (P). The said order reads as under:-

> " The following postings of officers are hereby ordered:-
>
> 1. Shri Dinesh Kumar, SG/IRSEE, Central Railway on reporting to this Railway is posted as Dy.CEE (C) HQ vice Shri B.B.Karhade;
>
> 2. Shri B.B.Karhade, Dy. CEE (C) HQ-CCG is transferred and posted as Sr.Dee(P) RTM vice Shri U.S.Upadhyay proceeded on 86 days Ex.India Leave w.e.f. 1/7/2004.
>
> This issues with the approval of competent authority.
>
> Necessary charge reports should be sent

to FA & CAO (EG)/CCE-CCG and this office as usual."

3. According to petitioners this innocuous order, issued in exigencies of administration, was made subject matter of challenge in the above mentioned O.A. and the Tribunal has quashed and set aside the same. After doing so, the Tribunal directed as under:-

> "9. I am of the view that in this case the transferring authority should have given atleast some reasons for making a transfer against the instructions contained in para 9.1 and 9.2. I, therefore, on the ratio laid down by the Apex Court in the case of Director of School Education, Madras Vs. O.Karuppa Thevan & Anr. (Supra) direct that though the transfer order as such does not suffer from any legal infirmity but it should not be affected till the end of the current academic year since the daughter of the applicant is studying in Mumbai. The respondents will be at

liberty to post the applicant on any other equivalent post which does not involve shifting of headquarters from Mumbai."

4. We have heard Mr.Suresh Kumar for petitioners and Mr.Walia for respondent. In our view, the Tribunal has seriously erred in law in interfering with the order of transfer after observing that the same does not suffer from any infirmity. After perusing all the records as well as the impugned order, it is clear that the order of transfer is for administrative reasons and to meet exigencies in sevice. It is clear that no malafides could be attributed merely because the transfer is midstream. The Tribunal proceeds to hold that the order is not vitiated by malafides but is contrary to guidelines. Ultimately, by their very nature, guidelines cannot be elevated to such a height as to make it impossible for the employer to transfer the employee. Mere departure from such guidelines would not vitiate the transfer unless something more is demonstrated. In the present case we are satisfied that the transfer order was not

vitiated for want of compliance with the executive instructions/ guidelines. Moreover, the transfer order indicates that the posting of respondent was to meet the administrative exigencies. Now that the person whom respondent replaced has resumed and the order of transfer has been quashed by the C.A.T., in this case, no further directions can be issued pertaining to the same.

5. We have gone into the matter, only because the interference by C.A.T. would have created a peculiar situation for petitioners herein. Since the order of C.A.T. cannot be sustained it is quashed and set aside. It is clear that the period specified in the order having come to an end it is for petitioners to take such steps as are necessary and in public interest for posting the petitioner and its other employees. Needless to observe that considering the fact that respondent is due to retire on superannuation and his daughter is appearing for examination in April-May 2005, the authorities will consider this aspect while issuing orders of posting in future.

6. With these observations petition stands disposed of with no order as to cost.

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